IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3058 of 1984
Date of decision : 03.10.2007

The Municipal Committee Abohar

… Appellant

Versus

Dal Chand

…Respondent

Present : Mr.Dheeraj Jain, Advocate for the appellant.

Mr.D.B.Singh, Advocate for the respondent.

Vinod K.Sharma, J. (Oral)

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit for recovery filed by the plaintiff-respondent was ordered to be decreed and permanent injunction was also granted in favour of the plaintiff-respondent restraining the appellant-defendant from recovering the amount of Rs.850.50 paise.

The plaintiff-respondent filed a suit for recovery on account of the amount of water tax and house tax respectively charged by the appellant-defendant-Municipal Committee illegally, relating to shop and house situated at Abohar of the plaintiff for the year 1977-78 and 1978-79 and also the interest charged on the said amount.

It was claimed by the plaintiff that the appellant-defendant-Municipal Committee had imposed double tax for the same properties and the taxes being levied are known as house tax and water tax, which are charged on the rental value of the property. It was claimed that house tax has nothing to do with the water tax as the supply of water which is charged separately from the customers which is shown as water rate. It was claimed that continuation of the said tax is un-desirable as well as illegal. It was claimed that the appellant-

committee had acted in excess of its jurisdiction in calculating the value of the building for the purpose of house tax. The act of the committee to effect recovery was also challenged. The suit was contested by raising preliminary objections that jurisdiction of the Civil Court was barred in hearing the suit of the plaintiff; plea of estoppel was also taken. On merit, it was claimed that the appellant-committee has been charged both the taxes under the law by order of the Punjab Government. It was also claimed that water tax was being charged even before the enforcement of the Constitution of India. An objection was also raised that the suit was not competent as no appeal was filed to the Deputy Commissioner against the house tax, charged by the defendant-committee prior to 1978-79. In the replication, the allegation made in the complaint was re-assessed on the pleadings of the parties and the following issues were framed as under:-

"1. Whether this court has jurisdiction to try this suit? OPP.
2. Whether the plaintiff is entitled to recover any amount from the defendant? If so, what that amount is? OPP
3. Whether the plaintiff is estopped from filing this suit by his act and conduct? OPD.
4. Whether the notice given by the plaintiff U/S 49 of the Punjab Municipal Act, 1911, is a valid one? OPP
5. Whether the water tax was imposed by the defendant before coming into force of the Constitution of India? So, to what effect? OPD.
6. Whether the suit is bad for mis-joinder of caused of action? If so, to what effect? OPD.
7. Whether the plaintiff is entitled to the injunction prayed for? OPP.
8. Relief."

The learned courts below have held that imposition of water tax was totally without jurisdiction as the Municipal Committee acted beyond the jurisdiction to recover the water tax, holding that the Civil Court would have

the jurisdiction to entertain and try the same. As regards house tax is concerned, the learned courts below came to the conclusion that the provision of Section 61 of the Act was not properly applied and as such, the same is to be held in violation of the provisions of the Act. Therefore, the Civil Court had the jurisdiction to entertain and try the present suit.

The following substantial question of law arises for consideration in the present appeal:-

> "Whether the Civil Court has the jurisdiction to entertain and try the suit challenging the claim of house tax?"

Learned counsel appearing on behalf of the appellant fairly conceded that as far as the imposition of water tax is concerned, the same is without jurisdiction and therefore the order passed by the learned courts below qua water tax be upheld in view of the law laid down by this Court in the case of '**Municipal Committee, Abohar, Tehsil Fazilka, District Ferozepur vs. Satish Chander Narang and another'** RSA No.965 of 1989 decided on 19.03.2007.

As regards the claim of house tax is concerned, the learned counsel appearing on behalf of the appellant placed reliance on the judgment of Hon'ble Supreme Court in the case of **NDMC v. Satish Chand, 2003 (10) SCC 38** to contend that as the plaintiff-respondent has remedy of an appeal, therefore, the jurisdiction of the Civil Court was barred. The Hon'ble Supreme Court in the case of **NDMC (supra)** has been pleased to lay down as under:-

> "Section 9 of the Civil Procedure Code, 1908 gives a wide jurisdiction to the civil courts to try all suits of civil nature "excepting suits of which their cognizance is either expressly or impliedly barred". An express bar is where a stature itself contains a provision that the jurisdiction of a civil court is barred. An implied bar may arise when a statute provides a special remedy to an aggrieved party like a right of appeal as contained in the Punjab Municipal Act.

> Section 84 of the Act provides a complete remedy to a party aggrieved by the assessment and levy of tax. Section 86 provides that the remedy of appeal is the only remedy available to a party to challenge the assessment and restrains a party from taking recourse to any other mode. A provision like this is the implied bar envisaged in Section 9 CPC against filing a civil suit.
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> Besides, the position in law has been well settled by the supreme Court in various decisions. Sections 84 and 86 of the Punjab Municipal Act 1911 bar the jurisdiction of the civil court, where the grievance relates to the assessment or the principle of assessment by necessary implication."

However, learned counsel appearing on behalf of the respondent contended that the judgments passed by the learned courts below deserve to be upheld as in the present case, the plaintiff has not challenged the imposition of house tax but only the recovery of house tax in absence of any valid order, it was claimed that no assessment of the house tax, has been made in the present case. The challenge to house tax was on ground of non-compliance of provisions of the Act, as no assessment had been made therefore, it was contended that the jurisdiction of the Civil Court was not barred. Learned Courts below therefore, were justified in interfering with the matter.

Learned counsel for the respondent contended that in the Regular Second Appeal, this Court cannot interfere with the matter as no substantial question of law arises for consideration in this appeal, in view of the concurrent findings of fact recorded by the learned courts below. In support of this contention, reliance placed on the judgment of Hon'ble Supreme Court in case **Kondiba Dagadu Kadam v Savitribai Sopan Gujar and others (1999) 3 SCC 722** wherein, it has been held as under :-

> "It is not within the domain of the high Court to investigate the grounds on which the findings were arrived at, by the

> last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witness accepted by the trial court in respect of credibility but even where it has rejected the witness accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

He also placed reliance on the judgment of Hon'ble Supreme Court in case of **Mohan Lal vs. Nihal Singh, (2001) 8 SCC 584.** The learned counsel has thus contended that in view of the concurrent findings of fact recorded by learned courts below, it is not open to this Court to interfere with the matter.

Learned counsel appearing on behalf of the respondent thereafter contended that interference with the concurrent findings of fact would amount to extending the jurisdiction by this Court and therefore, this appeal deserves to be dismissed. In support of this plea, he placed reliance on the judgment of Hon'ble Supreme Court in the case of **Dudh Nath Pandey (Dead) by LRs. Vs. Suresh Chandra Bhattasali (Dead) by LRs. (1986) 3 Supreme Court Cases 360.**

I have considered the arguments raised by the learned counsel for the respondent and find no force in the same as observed above. The

substantial question of law regarding jurisdiction of the civil Court to entertain and try the suit has to be answered in favour of the appellant, in view of the law laid down by Hon'ble Supreme Court in case of **NDMC (supra).** In view of Sections 84 and 86 of the Punjab Municipal Act, it has to be held that Civil Court has no jurisdiction to entrain and try the suit qua challenge to house tax as it is always be open to the defendant to raise all the pleas before the appellate authority.

Consequently this appeal is allowed and decree passed by the learned courts is set aside and the suit filed by the plaintiff is ordered to be dismissed. However, in view of the fact, that imposition of water tax has to be held void and without jurisdiction. The said part of the decree would be binding on the appellant.

[**Vinod K.Sharma**]

Judge

03.10.2007

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